

IN THE  
SUPREME COURT OF THE UNITED STATES

Supreme Court, U.S.  
FILED

FEB 19 1987

JOSEPH F. SPANIOL, JR.  
CLERK

October Term, 1986

(3)  
No. 86-1111

DERBY ASSOCIATES, A PARTNERSHIP OF  
THE STATE OF NEW JERSEY

*Petitioner,*

*v.*

SEASHORE CLUB CONDOMINIUM ASSOCIATION, INC.,  
A CORPORATION OF THE STATE OF NEW JERSEY;  
THE BOARD OF TRUSTEES OF SEASHORE  
CONDOMINIUM ASSOCIATION, INC., AND  
GNOC CORP. t/a GOLDEN NUGGET,  
A CORPORATION OF THE STATE OF NEW JERSEY;  
GOLDEN NUGGET, INC., j/s/a

*Respondents.*

**REPLY BRIEF OF PETITIONER FOR WRIT  
OF CERTIORARI TO THE SUPERIOR  
COURT, APPELLATE DIVISION OF THE  
STATE OF NEW JERSEY**

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## QUESTIONS PRESENTED

Whether individual condominium owners, who previously bargained for and acquired traditional fee simple interests in property in which was conferred an absolute power of disposition by contract and statute, are constitutionally protected against a subsequent amendment to the New Jersey Condominium Act which now empowers a majority of other condominium owners to disregard a dissenting minority and compel the dissolution and sale by all condominium owners of the fee simple interests previously obtained by contract.

**PARTIES TO THE PROCEEDINGS**

As set forth in the Original Petition.

**JURISDICTION, PERTINENT CONSTITUTIONAL AND  
STATUTORY PROVISIONS.**

As set forth in the Original Petition.

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## LEGAL ARGUMENT

### RESPONDENT MISCONCEIVES THE HOLDING OF *TROY V. RENNA* AND ITS APPLICATION TO THIS CASE.

Respondent argues that the present matter is substantially similar to the case of *Troy Ltd. v. Renna*, 727 F.2d 287 (3 Cir. 1984) in which the Court applied the tri-partite test enunciated by this Court in *Energy Reserves Group Inc. v. Kansas Power & Light Co.*, 454 U.S. 400, (1983). Respondent's argument misconceives the holding and analysis of the *Troy* court, and in the process unfairly diminishes the value and extent of those rights of the petitioner which are destroyed by the legislation currently under review. In *Troy* the appellate court was considering the constitutional propriety of legislation which enlarged a pre-existing statutory tenancy created by the prior Anti-Eviction Act. The earlier legislation provided that tenancies would not be terminated following conversion to condominium status, but would remain "protected" for a prescribed period of time subject to certain conditions. The Tenancy Act under review in *Troy* merely increased the duration of this statutorily created tenancy for the elderly and disabled. Thus, the concepts of bargain and contract, so critical to the present case, were not genuinely implicated in *Troy*:

The Tenancy Act only operates to protect the statutory tenants whose relationship with their landlords had already become non-consensual by virtue of the Anti-Eviction Act. That is, the Tenancy Act simply enlarges the terms of the statutory tenancy already created by the Anti-Eviction Act. *Id.* at 297.

Even assuming a contractual impairment, the Court noted that such would not be severe given the advanced age of the beneficiaries, the continued right to seek rent increases, and the availability of other bases for eviction. *Id.* 297-98. Moreover, the Court held that the State had



provided a well documented justification for the legislation by showing a broad remedial interest in the protection of the mental and physical health of citizens of advanced age or infirmity. In so holding, the Court expressly relied on the lengthy declaration and findings explicitly set forth in the legislation. *Id.* at 298 citing N.2 at 290. The Court in the present matter will search in vain for any comparable legislative findings or declarations. Thus, while the *Troy* Court confronted a questionable impairment of contractual expectations justified by compelling public reasons, the present Court confronts a mirror image of these issues — an overwhelming impairment ensuring the nullification of the contract, justified in reality by nothing more than the rationale of private gain.

Clearly, the plaintiff in *Troy* did not lose anything that he had previously obtained by bargain and sale. He retained, unlike the petitioner in the present case, the property he had purchased, only his lessor's rights, which were entirely statutory to begin with, were affected by the retroactive amendment to the existing law. Hence, properly understood, the *Troy* case, unlike the present matter, does not involve the defeat of bargained for expectations.

The Respondent's misreading of the impairment in *Troy* is consistent with its degradation of the petitioner's property interests which are lost by retroactive operation of the amendment in this case. Respondent's argument is premised on the fact that condominium property is subject to legislative regulation. While the extent of regulation may be a factor bearing on the issue of expectations, it is not dispositive. In *Worthen v. Kavanaugh*, 295 U.S. 56 (1935) and *Trigle v. Acme Homestead Assn*, 297 U.S. 186 (1935) amendments to comprehensive statutory schemes served to defeat contractual expectations. In both cases, despite such extensive statutory regulation, this Court held that the modifying legislation impermissibly violated the contractual rights of the parties.

Similarly, in the present matter many attributes of condominium life are statutorily prescribed, e.g. the contents of the master deed (N.J.S.A. 46:8B-9), the functions of the Condominium Association (N.J.S.A. 46:8B-12), election of the governing board (N.J.S.A. 46:8B-12.1), Common Expenses (N.J.S.A. 46:8B-17), etc. etc. Petitioner obviously would have no constitutional protection against subsequent modification of these particulars. The amendment under review, however, does not purport to change one or more particular, rather it extinguishes, in its entirety, the basic subject matter of petitioner's bargain: fee interests in real property that were defined by statute and holding of the Supreme Court of New Jersey as equivalent to those interests held by an owner of a single family detached home. In no other precedent of this Court, or any other court, affirming the constitutionality of legislation in response to a Contract Clause challenge has the impairment been so profound and irreversible.

### CONCLUSION

For the reasons set forth in this Reply, and in the original Petition, this Court should grant the Writ and reverse the decision of the Court below.

Respectfully submitted,

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